



Board of Adjustment Special Study Session

DATE: September 3, 2003
TIME: 5:00 PM
LOCATION: Kiva Conference Room
3939 N. Drinkwater Boulevard, City Hall

Interested parties are invited to observe Study Sessions, although discussion is limited to the participation of Board Members and City staff. Public comment is reserved for the Regular Meeting.

Roll Call

Discussion Items

1. Administrative Items
2. Customer Service Questionnaire
3. Discussion regarding site visit to 8755 E Dixileta Drive
4. Discussion of item(s) on the regular agenda.
5. Board update and discussion of changes to the City Zoning Ordinance.



Board of Adjustment Executive Session

DATE: September 3, 2003
TIME: 5:30 pm.
LOCATION: Kiva Conference Room
3939 N. Drinkwater Boulevard, City Hall

Note: Pursuant to A.R.S. § 38-431.03 (A) (3), the Board may meet for discussion and consultation with the City Attorney for legal advice in an Executive Session, regarding any of the items set forth on the Regular Meeting agenda. The Board may meet before, during or after the Regular Meeting on these items, or during or after a Special Study Session.

Discussion Items

1. Consultation with the City's Attorney for legal advice regarding case number 7-BA-2003.

Adjournment



AGENDA

Board of Adjustment REGULAR MEETING

DAY & DATE: Wednesday, September 3, 2003
TIME: 6:00 PM
LOCATION: 3939 N. Drinkwater Boulevard
Kiva at City Hall

CALL TO ORDER

ROLL CALL

ADMINISTRATIVE ITEMS

1. Vote to rescheduling the October, 2003, hearing from October 8th to October 1st.

APPROVAL OF MINUTES

2. August 6, 2003

CONTINUANCES

3. **7-BA-2003 (Zoning Interpretation Appeal)** an appeal of the Zoning Administrator's interpretation responding to a June 4, 2003 letter requesting an interpretation on the property located at 8755 E Dixileta Drive zoned Single Family Residential, Environmentally Sensitive Lands, Foothills Overlay District (R1-190 ESL/FO). **Staff/Applicant Contact is Kroy Ekblaw, 480-312-7000. TO BE CONTINUED TO 10/1/2003**

REGULAR AGENDA

4. **5-BA-2003 (Waxman / Morrison Property Variance)** request by Marcia D Morrison, applicant/owner, for a variance to allow an 18 foot front yard setback along 64th Street in lieu of the required 30 foot setback located on a 17,268+/- sq ft parcel located at 6402 E Calle del Paisano. **Staff contact person is Keith Niederer, 480-312-4211. Applicant contact person is Marcia Waxman, 480-946-8346.**

BOARD OF ADJUSTMENT

SEPTEMBER 3, 2003

PAGE 2

5. **6-BA-2003 (Khalaj Residence)** request by David Khalaj, applicant/owner, for a variance from the 24-foot height restriction to allow a 26-foot ridgeline on a property located at 12670 E Cochise Drive with Single Family Residential, Environmentally Sensitive Lands zoning (R1-43 ESL). **Staff contact person is Al Ward, 480-312-7067. Applicant contact person is David Khalaj, 602-722-4457.**

ADJOURNMENT

The Board of Adjustment consists of:

James Vail, Chairman; Terry Kuhstoss, Vice Chairman; Jennifer Goralski, Carol Perica, Norman Sands, Neal Waldman, Laurel Walsh, Commissioners.



Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the City Clerk's Office at 480-312-2412. Requests should be made as early as possible to allow time to arrange accommodation.

BOARD OF ADJUSTMENT REPORT



MEETING DATE: September 3, 2003 ITEM No. _____

ACTION REQUESTED: Zoning Ordinance Variance

SUBJECT **Waxman / Morrison Property Variance**

REQUEST Request to approve a variance to allow an 18 foot front yard setback along 64th Street in lieu of the required 30 foot setback located on a 17,268+/- sq ft parcel located at 6402 E Calle del Paisano.
5-BA-2003

APPLICANT/ OWNER Marcia Waxman
CONTACT 480-946-8346

LOCATION 6402 E Calle Del Paisano

PUBLIC COMMENT Staff has received three calls in support of the application as of the time this report was drafted.

ZONE R1-10 (Single Family Residential District)

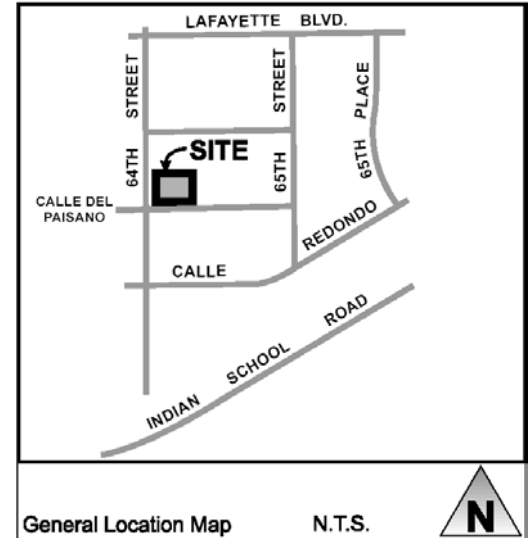
ZONING/ DEVELOPMENT CONTEXT The subject parcel is located within the Arcadia section of Scottsdale in the Hidden Village Ten subdivision. This subdivision was platted in March of 1958 while still within Maricopa County. Scottsdale annexed this property in 1970 and approved R1-10 zoning. The properties east of 64th Street, south of Lafayette and north of the Arizona Canal are within Scottsdale and zoned R1-10. The entire 64th Street right-of-way, and the properties on the west side of 64th Street are within the City of Phoenix.

ORDINANCE REQUIREMENTS Article V, Section 5.404.E.1.c, requires a front yard setback of thirty (30) feet along the 64th Street frontage.

DISCUSSION Case 5-BA-2003 is a re-hearing of a case 12-BA-2002, a zoning variance that was denied by the Board of Adjustment on January 8, 2003 by a vote of 4 to 3. Below is a chronology of events leading up to the rehearing of this case.

Jan 8, 2003: Board of Adjustment denies case 12-BA-2002, a request for an 8-foot front yard setback in lieu of the required 30 feet along the 64th Street frontage. A copy of the case 12-BA-2003 staff report and attachments are included in this packet.

After the case was denied, the applicant, along with five other property owners along the east side of 64th street, submitted an application to the City of Phoenix to abandon excess right-of-way.



March 26, 2003: City of Phoenix Abandonment Hearing Officer approves a right-of-way abandonment of 10 feet subject to eight stipulations, including it must be formally adopted by the Phoenix City Council. Staff has contacted the City of Phoenix Planning department and were told that all Phoenix stipulations have been met.

June 4, 2003: Applicant presents modified request to the Board of Adjustment asking the Board to vote that there is a “material change” to the application/case that was heard by the Board of Adjustment on January 8, 2003 and to permit the modified request be heard at an upcoming Board of Adjustment hearing. Section 4 Power & Duties, subsection 403, Resubmittals of the Board of Adjustment bylaws allows the Board of Adjustment to hear and decide whether an application contains a material change thus allowing the case to be re-heard. The variance application that was denied on Jan. 8 was a request to provide an 8-foot front yard setback in lieu of the required 30 feet. Since the applicant received a 10-foot right-of-way abandonment from the City of Phoenix, they have now acquired 10 additional feet of property thus changing the application request to provide an 18-foot front yard setback in lieu of the required 30-feet along the 64th street frontage. The outcome of this hearing was the Board did agree unanimously with the applicant saying the modification is considered a “materially change” to the one heard in January 2003 and to place this request on the next available Board of Adjustment agenda once the abandonment becomes finalized with the City of Phoenix and recorded with Maricopa County.

July 2, 2003: Phoenix City Council approves resolution 19965 finalizing the abandonment of 10-feet of right-of-way along the east side of 64th Street. A copy of this document is included in the attachments to this case.

July 8, 2003: Abandonment resolution recorded with the Maricopa County Records Office.

August 4, 2003: Recordation documents provided to the City of Scottsdale Planning Staff and the variance application is placed on the September 3, 2003 Board of Adjustment agenda as an action item.

FINDINGS

- 1. That there are special circumstances applying to the property referred to in the application which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address:**

The applicant states in their narrative that the excessive right-of-way deprives the homeowner of the ability to expand in a manner consistent with other homes on similar sized lots. The 64th Street right-of-way is 70 feet wide with a 30-foot half-street width on the east side. This right-of-way width is similar to that of a collector street. The Scottsdale General Plan shows 64th Street between Lafayette and the Arizona Canal as a local residential street. Local residential

streets typically have a 46-foot wide right-of-way and a 23-foot wide half-street. 64th Street has dead-ended at the Arizona Canal bank for as long as it has been constructed and there are no plans for extending the street over the canal to connect with Indian School Rd.

The recent City of Phoenix 10 foot right-of-way abandonment along 64th street is a good indicator that 64th Street will probably never extend south across the canal to Indian School Rd.

2. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district:

The applicant states that applying the zoning code to this property would force the home addition to conform to an orientation that is incompatible with the orientation of every other home in the neighborhood. The applicant also mentions that approval of the variance is necessary to make possible the reasonable use of the subject property.

The R1-10 section of the zoning ordinance, without obtaining a variance, can accommodate expansion on the north side of home along with a possible second story addition. However, there are no existing 2-story homes in the neighborhood.

3. That special circumstances were not created by the owner or applicant:

The applicant believes that right-of-way along 64th Street is too wide. The 80 foot wide right-of-way on 64th Street has existed at least since the subdivision was platted in 1958. Earlier plans for City showed 64th Street extending north of Indian School through to Camelback Road. Current City plans do not anticipate a 64th Street connection to the south. The recent 10-foot right-of-way abandonment by the City of Phoenix is an indication that this street will probably never extend south across the canal to Indian School Road.

Some other properties abutting 64th Street have this same right-of-way width issue where 64th street is their narrowest street frontage (front yard)

4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general:

The applicant states that several homes have been expanded and constructed closer to 64th Street and that this request would not be any different. The applicant went on to mention that adding a second story to the existing home in lieu of the one-story expansion would be out of character with the existing neighborhood and it would block the neighbor's views of Camelback Mountain.

There are several homes in the neighborhood, especially those along 65th Street, that have their garages located closer to the street. This is because those portions of those lots happen to not be the narrowest street frontage; therefore they are allowed to be setback only 15 feet.

A graphic is included within the staff report packet that breaks down the setback requirements for this neighborhood.

Potential detrimental impacts of this application could be the closeness of the proposed expansion to 64th Street. The home will appear closer to 64th Street than the homes to the north and south along 64th Street.

Finally, the applicant has completed the required Community Input Certification and states there are no neighbors in opposition to the proposed expansion or variance.

STAFF CONTACT

Keith Niederer, Planner
Report Author
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E-mail: KNiederer@ScottsdaleAZ.gov

ATTACHMENTS

1. Application
2. Background Information
3. Justification
4. Project Narrative
5. Site plan
6. Aerial Map
7. Vicinity Map
8. Zoning Map
9. June 4, 2003 Board of Adjustment Minutes
10. March 26, 2003 City of Phoenix Abandonment Hearing
11. Recorded Resolution No. 19965 - Abandoning public right-of-way along the east side of 64th Street.
12. 12-BA-2003 Staff Report, January 8, 2003
13. January 8, 2003 Board of Adjustment Minutes

BOARD OF ADJUSTMENT REPORT



MEETING DATE: 9/3/2003

ITEM NO. _____

ACTION REQUESTED: Zoning Ordinance Variance

SUBJECT

Khalaj Residence

REQUEST

Request to approve a variance from the 24-foot height restriction to allow a 26-foot ridgeline on a property located at 12670 E Cochise Drive with Single Family Residential, Environmentally Sensitive Lands zoning (R1-43 ESL).

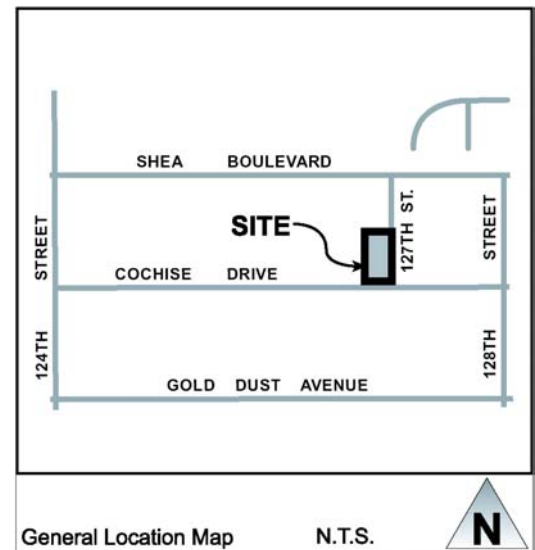
6-BA-2003

OWNER/ APPLICANT CONTACT

David Khalaj
602-722-4457

LOCATION

12670 E Cochise Dr



PUBLIC COMMENT

The applicant has sent out notices to surrounding property owners; the City has also sent out notices to 21 property owners within 300 feet of the subject property.

- Two (2) letters of support have been received from neighbors.
- Staff received one (1) phone call requesting additional information; the caller indicated that the applicant should be required to comply with the provisions of the Ordinance applicable to the site.

ZONING

The lot is zoned R1-43 ESL (Single Family Residential, Environmentally Sensitive Lands).

DEVELOPMENT CONTEXT

The undeveloped, 1.16+/- acre parcel is located at 12670 E Cochise Drive, which is west of 128th Street, south of Shea Boulevard, and north of Gold Dust Avenue.

The site has a rural desert character and is located within the Environmentally Sensitive Lands Ordinance area and requires the preservation of Natural Area Open Space (NAOS).

ORDINANCE REQUIREMENTS

Article VI, Section 6.1070.B.1.b of the Zoning Ordinance limits the maximum allowed building height to twenty-four (24) feet above natural grade in single-family residential ESL (R1 ESL) districts.

History

ESLO 1	1991	30-ft height limit
ESLO 2	2002	26-ft
ESLO 2-Update	2003	24-ft

Ordinance Applicability

The Scottsdale City Council adopted the 24-foot building height, along with other revisions, to the Environmentally Sensitive Lands Ordinance (ESLO-2 Update) on April 1, 2003, with the revised Ordinance coming into effect 30 days later, on May 1, 2003.

A building permit must be issued prior to the new ordinance coming into effect in order for the provision of the previous Ordinance to apply.

**APPLICANT'S
PROPOSAL**

September 3, 2003 Update: This case was originally heard by the Board on August 6, 2003 when the appellant had requested a 28 feet building height. At the hearing the appellant's representative requested continuance of the case to September 3, 2003 to allow the application to be modified to show a reduced building height of 26 feet, to be consistent with the height requirements in effect at that time of submittal. The Board approved the continuance and the application has been modified to 26 feet.

The request is to allow a single-family home to be built to a height of twenty-six (26) feet above natural grade, rather than the twenty-four (24) feet currently provided by the Zoning Ordinance.

The appellant maintains that, prior to submittal, the City had indicated to him that the established building height for this area was 26 feet. The appellant submitted plans for development of a 7,900 square-foot single-family home on April 25, 2003, prior to May 1, 2003, the day the new ESL Ordinance took effect.

The appellant also notes that five (5) existing residences located in the immediate vicinity and essentially surrounding his lot all have heights above the current requirement of 24 feet. A surveyor was hired by the appellant to geometrically calculate the heights of the surrounding homes and the following heights were determined. See *Attachment 8*.

FINDINGS

- 1. That there are special circumstances applying to the property referred to in the application, which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address:**

The appellant states that the special circumstances pertaining to this property are that many of the existing residences in the area were allowed a twenty-six (26) to thirty (30) building height.

Staff notes that the current 24-foot building height provisions of the R1-43 ESL zoning district apply to new residences receiving building permits on or after May 1, 2003. Although the adjacent buildings have higher heights, as allowed by a previous version of the Ordinance, the current 24-foot building heights apply to this case.

- 2. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district:**

The appellant states that this building should benefit from previous standards applied to five (5) other homes located in the immediate vicinity of the subject lot, which contain the same approximate building height being requested.

Staff observes that the adjacent homes were built under the provisions of the previous ESL Ordinance, which allowed for higher building heights ranging from twenty-six (26) to thirty (30) feet.

- 3. That special circumstances were not created by the owner or applicant:**

The appellant indicates that the house plans for the site were submitted to the City on April 25, 2003. This was approximately one week prior to the current version of the ESL Ordinance that came into effect on May 1, 2003. The appellant also indicates that he did not have control over the length of time required by City staff to review these plans and that during this review period, the lower building height requirement was implemented.

Staff again notes that a building will only be held to a previous standard if the building permit is issued prior to the date new requirements come into effect. If a building permit has not yet been issued, City policy maintains, the plans are reviewed under the provisions of the current version of the Ordinance.

- 4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general:**

The appellant states that the requested 26-foot building height will not be detrimental to persons residing in the vicinity, to adjacent property, the neighborhood, or the general public welfare since the requested height is currently existing on the adjacent lots.

The principle of maintaining low building heights in the Environmentally Sensitive Lands Ordinance is to protect and preserve significant natural and visual resources, to reduce the visual impact of building, and to maintain the rural desert character of the area.

STAFF CONTACT

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ATTACHMENTS

1. Application
2. Background Information
3. Justification
4. Project Narrative
5. Context Aerial
6. Aerial Close-Up
7. Zoning Map
8. Comparison of Surrounding Properties
9. Proposed Site Plan
10. DRAFT August 6, 2003 Minutes